

**54-8b-1. Title.**

This chapter is known as the "Public Telecommunications Law."

Amended by Chapter 269, 1995 General Session

**54-8b-1.1. Legislative policy declarations.**

The Legislature declares it is the policy of the state to:

- (1) endeavor to achieve the universal service objectives of the state as set forth in Section 54-8b-11;
- (2) facilitate access to high quality, affordable public telecommunications services to all residents and businesses in the state;
- (3) encourage the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state;
- (4) allow flexible and reduced regulation for telecommunications corporations and public telecommunications services as competition develops;
- (5) facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure, including networks with nondiscriminatory prices, terms, and conditions of interconnection;
- (6) encourage competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis;
- (7) seek to prevent prices for tariffed public telecommunications services or price-regulated services from subsidizing the competitive activities of regulated telecommunications corporations;
- (8) encourage new technologies and modify regulatory policy to allow greater competition in the telecommunications industry;
- (9) enhance the general welfare and encourage the growth of the economy of the state through increased competition in the telecommunications industry; and
- (10) endeavor to protect customers who do not have competitive choice.

Enacted by Chapter 269, 1995 General Session

**54-8b-2. Definitions.**

As used in this chapter:

- (1) (a) "Aggregator" means any person or entity that:
  - (i) is not a telecommunications corporation;
  - (ii) in the ordinary course of its business makes operator assisted services available to the public or to customers and transient users of its business or property through an operator service provider; and
  - (iii) receives from an operator service provider by contract, tariff, or otherwise, commissions or compensation for calls delivered from the aggregator's location to the operator service provider.
- (b) "Aggregator" may include any hotel, motel, hospital, educational institution, government agency, or coin or coinless telephone service provider so long as that entity qualifies under Subsection (1)(a).
- (2) "Basic residential service" means a local exchange service for a residential customer consisting of:

- (a) a single line with access to the public switched network;
- (b) touch-tone or the functional equivalent;
- (c) local flat-rate unlimited usage, exclusive of extended area service;
- (d) single-party service;
- (e) a free phone number listing in directories received for free;
- (f) access to operator services;
- (g) access to directory assistance;
- (h) access to lifeline and telephone relay assistance;
- (i) access to 911 and E911 emergency services;
- (j) access to long-distance carriers;
- (k) access to toll limitations services;
- (l) other services as may be determined by the commission; and
- (m) no feature.

(3) "Certificate" means a certificate of public convenience and necessity issued by the commission authorizing a telecommunications corporation to provide specified public telecommunications services within a defined geographic service territory in the state.

(4) "Division" means the Division of Public Utilities established in Section 54-4a-1.

(5) "Essential facility or service" means any portion, component, or function of the network or service offered by a provider of local exchange services:

(a) that is necessary for a competitor to provide a public telecommunications service;

(b) that cannot be reasonably duplicated; and

(c) for which there is no adequate economic alternative to the competitor in terms of quality, quantity, and price.

(6) (a) "Feature" means a custom calling service available from the central office switch, including call waiting, call forwarding, three-way calling, and similar services.

(b) "Feature" does not include long distance calling.

(7) "Federal Telecommunications Act" means the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

(8) "Incumbent telephone corporation" means a telephone corporation, its successors or assigns, which, as of May 1, 1995, held a certificate to provide local exchange services in a defined geographic service territory in the state.

(9) "Intrastate telecommunications service" means any public telecommunications service in which the information transmitted originates and terminates within the boundaries of this state.

(10) "Local exchange service" means the provision of telephone lines to customers with the associated transmission of two-way interactive, switched voice communication within the geographic area encompassing one or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

(11) "Mobile telecommunications service" means a mobile telecommunications service:

(a) that is defined as a mobile telecommunications service in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124; and

- (b) in which the information transmitted originates and terminates in one state.
- (12) (a) "New public telecommunications service" means a service offered by a telecommunications corporation which that corporation has never offered before.
- (b) "New public telecommunications service" does not include:
- (i) a tariff, price list, or competitive contract that involves a new method of pricing any existing public telecommunications service;
  - (ii) a package of public telecommunications services that includes an existing public telecommunications service; or
  - (iii) a public telecommunications service that is a direct replacement for:
    - (A) a fully regulated service;
    - (B) an existing service offered pursuant to a tariff, price list, or competitive contract; or
    - (C) an essential facility or an essential service.
- (13) "Operator assisted services" means services which assist callers in the placement or charging of a telephone call, either through live intervention or automated intervention.
- (14) "Operator service provider" means any person or entity that provides, for a fee to a caller, operator assisted services.
- (15) "Price-regulated service" means any public telecommunications service governed by Section 54-8b-2.3.
- (16) "Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.
- (17) "Substantial compliance" with reference to a rule or order of the commission means satisfaction of all material obligations in a manner consistent with the rule or order.
- (18) "Telecommunications corporation" means any corporation or person, and their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling, operating, managing, or reselling a public telecommunications service.
- (19) (a) "Total service long-run incremental cost" means the forward-looking incremental cost to a telecommunications corporation caused by providing the entire quantity of a public telecommunications service, network function, or group of public telecommunications services or network functions, by using forward-looking technology, reasonably available, without assuming relocation of existing plant and equipment.
- (b) The "long-run" means a period of time long enough so that cost estimates are based on the assumption that all inputs are variable.

Amended by Chapter 5, 2005 General Session

**54-8b-2.1. Competitive entry.**

(1) Notwithstanding any provision of Section 54-4-25 to the contrary, the commission may issue a certificate to a telecommunications corporation authorizing it to compete in providing local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation, except until December 31, 1997, a telecommunications corporation may not receive a

certificate to compete in providing local exchange service within any local exchange with fewer than 5,000 access lines that is owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state. The procedure specified in Subsection (3)(c) for excluding competition within a local exchange with fewer than 5,000 access lines shall apply on December 31, 1997 or thereafter.

(2) The commission shall issue a certificate to the applying telecommunications corporation if the commission determines that:

(a) the applicant has sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for; and

(b) the issuance of the certificate to the applicant is in the public interest.

(3) (a) The commission shall process the application in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(b) Each telecommunications corporation holding a certificate to provide public telecommunications service within the geographic area where an applicant is seeking to provide telecommunications service shall be provided notice of the application and granted automatic status as an intervenor.

(c) An intervening incumbent telephone corporation serving fewer than 30,000 access lines in the state may petition the commission to exclude from an application filed pursuant to Subsection (1) any local exchange with fewer than 5,000 access lines that is owned or controlled by the intervening incumbent telephone corporation. Upon finding that the action is consistent with the public interest, the commission shall order that the application exclude such local exchange.

(d) The commission shall approve or deny the application under this section within 240 days after it is filed. If the commission has not acted on an application within 240 days, the application is considered granted.

(4) If the commission issues a certificate to a competitive telecommunications corporation to provide local exchange services in a local exchange that has fewer than 5,000 lines and that is controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state, the commission shall impose an obligation upon the competitive telecommunications corporation to provide public telecommunications services to any customer or class of customers who requests service within the local exchange. The competing telecommunications corporation's obligation to serve shall be no greater than that of the incumbent telephone corporation.

(5) An incumbent telephone corporation with fewer than 30,000 access lines in the state may not be required to become a carrier of intrastate toll services.

Amended by Chapter 382, 2008 General Session

#### **54-8b-2.2. Interconnection.**

(1) (a) (i) The commission may require any telecommunications corporation to interconnect its essential facilities with another telecommunications corporation that provides public telecommunications services in the same, adjacent, or overlapping service territory.

(ii) Interconnecting telecommunications corporations shall permit the mutual exchange of traffic between their networks without unreasonable blocking or other unreasonable restrictions on the flow of traffic. In determining unreasonable blocking or

unreasonable restrictions, the commission shall, among other things, take into account the necessity and time required for adapting the network to respond to significant changes in usage patterns.

(b) (i) Whenever the commission grants a certificate to one or more telecommunications corporations to provide public telecommunications services in the same or overlapping service territories, all telecommunications corporations providing public telecommunications services in the affected area shall have the right to interconnect with the essential facilities and to purchase the essential services of all other certificate holders operating in the same area on a nondiscriminatory and reasonably unbundled basis.

(ii) Each telecommunications corporation shall permit access to and interconnection with its essential facilities and the purchase of its essential services on terms and conditions, including price, no less favorable than those the telecommunications corporation provides to itself and its affiliates.

(c) Nothing in this section shall prevent a telecommunications corporation from entering into nondiscriminatory agreements for interconnection with its essential facilities and the purchase and sale of essential services.

(d) (i) A telecommunications corporation shall file with the commission the prices, terms, and conditions of any agreement it makes for the interconnection of essential facilities or the purchase or sale of essential services.

(ii) The agreement shall take effect 10 days after filing.

(iii) Each telecommunications corporation shall allow any other telecommunications corporation to obtain interconnection with its essential facilities and to purchase essential services on prices, terms, and conditions no less favorable than those on file with the commission.

(e) If there is a dispute over interconnection of essential facilities, the purchase and sale of essential services, or the planning or provisioning of facilities or unbundled elements, one or both of the disputing parties may bring the dispute to the commission, and the commission, by order, shall resolve the dispute on an expedited basis.

(f) It is not a discriminatory pricing practice to vary prices to reflect genuine cost differences.

(2) (a) The commission shall adopt rules or issue an interim order which implements by December 31, 1996, the competitive provision of facilities-based intraLATA toll and local exchange services.

(b) The rules or interim order shall address those issues the commission determines are essential for a competing telecommunications corporation to provide intraLATA toll and local exchange services and necessary to protect the public interest, including the interconnection with essential facilities and the purchase and sale of essential services of telecommunications corporations authorized to provide public telecommunications services in the same or overlapping service territories on a nondiscriminatory and reasonably unbundled basis.

(3) (a) By December 31, 1997, the commission shall adopt additional rules or issue a final order to implement the competitive provision of facilities-based intraLATA toll and local exchange services.

(b) The rules or final order shall address other issues relating to:

(i) competition for intraLATA toll and local exchange services;

- (ii) blocking, timing of provisioning of unbundled elements, and service quality standards for interconnecting carriers;
  - (iii) the transition to a competitive market; and
  - (iv) the protection of the public interest.
- (4) Nothing in this section shall require or prohibit the commission from ordering changes in dialing patterns for intraLATA toll services.
- (5) If the commission, by order, approves the application of a telecommunications corporation to provide public telecommunications services in all or part of the service territory certificated to an incumbent telephone corporation before the adoption of the rules or final order described in Subsection (3), the commission may:
- (a) order the interconnection of essential facilities and the purchase and sale of the essential services of a telecommunications corporation with those of a competing telecommunications corporation on such terms and conditions and to the extent necessary to allow the competing telecommunications corporation to operate under authority granted by the commission; and
  - (b) address and resolve, by order, other issues necessary for the competitive provision of intraLATA toll and local exchange services.

Amended by Chapter 226, 1997 General Session

#### **54-8b-2.3. Pricing flexibility.**

(1) (a) A telecommunications corporation that obtains a certificate to compete with the incumbent telephone corporation in a defined geographic area pursuant to Section 54-8b-2.1 may price any public telecommunications services it is authorized to offer, or any new public telecommunications service, by means of a price list or competitive contract.

(b) Before the telecommunications corporation begins providing any authorized public telecommunications service, it shall notify the commission of:

- (i) its intent to begin providing the service; and
- (ii) the defined geographic area in which it will provide the service.

(2) (a) Notwithstanding other requirements of this chapter relating to pricing flexibility, beginning on May 2, 2005, an incumbent telephone corporation may offer retail end user public telecommunications services by means of a price list or competitive contract in the same manner as a competing telecommunications corporation as provided in Subsection (1):

- (i) if the incumbent telephone corporation:

(A) is in substantial compliance with rules and orders of the commission issued under Section 54-8b-2.2; and

- (B) has more than 30,000 access lines; and

- (ii) except as provided in Subsection (2)(b).

(b) (i) The incumbent telephone corporation's pricing flexibility shall be the same as a competing telecommunications corporation's pricing flexibility for all public telecommunications services.

(ii) The incumbent telephone corporation shall offer basic residential service throughout the area in which the incumbent telephone corporation is authorized by

certificate to provide basic residential service.

(3) Each price list shall:

(a) be filed with the commission:

(i) electronically; or

(ii) by paper copies only if permitted by commission rule;

(b) describe the public telecommunications service;

(c) set forth the basic terms and conditions upon which the public telecommunications service is offered; and

(d) list the prices to be charged for the public telecommunications service or the basis on which the services will be priced.

(4) Prices, terms, and conditions offered under price lists or competitive contracts that are different from tariff prices, terms, and conditions for the same services are not considered discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).

(5) A price list filed with the commission under this section shall take effect five days after it is filed with the commission.

(6) (a) Except as provided in Subsection (6)(b), the prices, terms, and conditions of a public telecommunications service offered by a telecommunications corporation pursuant to a competitive contract with a retail customer need not be filed with the commission.

(b) Notwithstanding Subsection (6)(a), a copy of a competitive contract shall be provided to the commission or division of public utilities if the commission or division of public utilities, pursuant to general investigatory powers, requests a copy of the competitive contract.

(7) (a) Subject to Subsection (7)(b), the commission may, as determined necessary to protect the public interest, set an upper limit on the price that may be charged by telecommunications corporations for public telecommunications services that may be priced by means of a price list or competitive contract in a defined geographic area.

(b) The upper limit on price imposed under Subsection (7)(a) shall be applied to all telecommunications corporations holding a certificate to provide the public telecommunications services in the defined geographic area in a competitively neutral manner.

(8) (a) The commission may revoke the authority of a telecommunications corporation to offer a public telecommunications service pursuant to a price list or competitive contract or the commission may adopt conditions or restrictions on the telecommunications corporation's pricing flexibility if the commission finds:

(i) (A) the telecommunications corporation has materially violated statutes or rules applicable to the specific service;

(B) there has been or there is an imminent threat of a material and substantial diminution in the level of competition; or

(C) competition has not developed; and

(ii) revocation or conditions or restrictions on the telecommunications corporation's pricing flexibility is in the public interest.

(b) The party asserting that revocation or conditions or restrictions on the telecommunications corporation's pricing flexibility should be imposed shall bear the

burden of proof.

(9) The commission shall establish rules or procedures to protect confidential, proprietary, and competitively sensitive information provided to the commission or the division pursuant to this section.

(10) (a) An incumbent telephone corporation serving fewer than 30,000 access lines in the state may petition the commission to be regulated under price regulation rather than traditional rate of return regulation.

(b) In implementing price regulation for an incumbent telephone corporation serving fewer than 30,000 access lines, the commission may modify the requirements of any provision of this section if necessary to the individual circumstances of the incumbent telephone corporation.

Amended by Chapter 10, 2009 General Session

**54-8b-3. Exemptions from requirements.**

(1) The commission, on its own initiative or in response to an application by a telecommunications corporation, a public agency, or a user of a public telecommunications service, may, after public notice and a hearing, issue an order exempting any telecommunications corporation or public telecommunications service from any requirement of this title, including any requirement or limitation relating to a telecommunication corporation's earnings, rate base, or pricing of public telecommunications services.

(2) The commission shall specify in the order any requirements, terms, or conditions which may apply to any exemption.

(3) An exemption may be granted for the entire service territory of a telecommunications corporation or for a specific geographic area of the service territory.

(4) The commission may issue an order for an exemption only if it finds that:

(a) the telecommunications corporation or service is subject to effective competition; and

(b) the exemption is in the public interest.

(5) In determining if the telecommunications corporation or service is subject to effective competition, the commission shall consider all relevant factors, which may include:

(a) the extent to which competing telecommunications services are available from alternative telecommunications providers;

(b) the ability of alternative telecommunications providers to offer competing telecommunications services that are functionally equivalent or substitutable and reasonably available at comparable prices, terms, quality, and conditions;

(c) the market share of the telecommunications corporation for which an exemption is proposed;

(d) the extent of economic or regulatory barriers to entry;

(e) the impact of potential competition; and

(f) the type and degree of exemptions to this title that are proposed.

(6) In determining if the proposed exemption is in the public interest, the commission shall consider, in addition to other relevant factors, the impact the proposed exemption would have on captive customers of the telecommunications

corporation.

(7) (a) The commission shall approve or deny any application for exemption under this section within 240 days, except that the commission may by order defer action for an additional 30-day period.

(b) If the commission has not acted on any application within the permitted time period, the application is considered granted.

Amended by Chapter 269, 1995 General Session

**54-8b-3.3. Services that must be offered on a nondiscriminatory basis -- Public telecommunications to be cost-based -- Packaged services -- Quality of service standards.**

(1) (a) As used in this section, "cost-based" means that the prices for the telecommunications services shall be established after taking into consideration the total service long-run incremental cost of providing the service.

(b) The term "cost-based" does not prevent the establishment of prices:

(i) that promote the universal availability of service in the state; or

(ii) that are offered by a telecommunications corporation for a public telecommunications service in a promotional offer, or market trial, or to meet competition.

(2) Except with respect to a price regulated service offered in a promotional offer, or market trial, or to meet competition and notwithstanding any other provision of this chapter:

(a) a telecommunications corporation with more than 30,000 access lines in the state that provides a public telecommunications service may not:

(i) as to the pricing and provisioning of the public telecommunications service, make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality; or

(ii) in providing services that utilize the local exchange network:

(A) make or give any undue or unreasonable preference or advantage to any person, corporation, or locality; or

(B) subject any person, corporation, or locality to any undue or unreasonable prejudice or disadvantage;

(b) public telecommunications services provided by a telecommunications corporation with more than 30,000 access lines in the state shall be nondiscriminatory, cost-based, and subject to resale as determined by the commission; and

(c) public telecommunications services may be packaged with other services, so long as they are also offered on a separate, unbundled basis.

(3) (a) In order to promote continued investment in the public telecommunications network and to improve the quality of service for end users, the commission may adopt rules governing service quality standards to end users for all public telecommunications services.

(b) The commission shall have the authority to enforce the rules adopted under this Subsection (3) by granting billing credits to the affected end user where the noncompliance is for reasons within the telecommunications corporation's control.

(c) Rules adopted under this Subsection (3) on or after January 1, 2005, shall

impose no greater requirements or obligations on any telecommunications corporation:

(i) than were applicable to that telecommunications corporation under rules adopted before January 1, 2005; or

(ii) than were imposed on telecommunications corporations that were not incumbent telephone corporations, if the telecommunications corporation is not an incumbent telephone corporation.

(d) An incumbent telephone corporation with less than 30,000 access lines in the state is exempt from this Subsection (3).

Amended by Chapter 5, 2005 General Session

**54-8b-4.5. Commission order -- Negotiated provisions of services --  
Contracts under this section.**

(1) (a) The commission may enter an order partially or wholly exempting any public telecommunications service from any requirement of this title relating to rates, tariffs, or fares.

(b) The commission may authorize the provision of all or any portion of a public telecommunications service under stated or negotiated terms to any person that is committed to the acquisition of comparable telecommunications services from an alternative source of supply through construction, lease, or any other form of acquisition.

(2) An incumbent telephone corporation may negotiate with the person or entity within the incumbent telephone corporation's service territory for the provision of retail end user public telecommunications services without regard to the provisions of any tariffs on file and approved by the commission, or any price list or competitive contract filed under Section 54-8b-2.3 with the commission but any rate, toll, fare, rental, charge, or classification of service in such contracts shall comply with Section 54-8b-3.3.

(3) (a) Within 10 days after the conclusion of the negotiations and prior to the execution of a contract under this section, the incumbent telephone corporation shall file with the commission the proposed final agreements and other evidence of the public telecommunications services to be provided, together with the charges and other conditions of the service.

(b) (i) The commission may approve or deny an application, or begin adjudicative proceedings to consider approval of a contract under this section within 30 days of the filing of the application by the incumbent telephone corporation.

(ii) If the commission begins adjudicative proceedings, the contract is effective when the commission orders that it is effective.

(iii) If the commission fails to approve a contract under this section, or fails to begin adjudicative proceedings within 30 days, the final contract is effective.

(c) In determining whether or not to approve a contract under this section, the commission shall consider all relevant factors, including, whether or not the contract for any rate, toll, fare, rental, charge, or classification of service:

(i) complies with Section 54-8b-3.3;

(ii) provides for adequate service at just and reasonable rates.

(d) After a contract under this section has become effective, the commission shall in the next general rate case for that incumbent telephone corporation:

(i) review the contract for consistency with the factors stated in this Subsection (3); and

(ii) make any adjustment in its rate order, including retroactive adjustments, that are necessary to avoid cross subsidization from other regulated intrastate telecommunications services.

(e) Subsection (3) does not apply to an incumbent telephone corporation subject to price regulation for public telecommunications services under Section 54-8b-2.3.

(4) Any incumbent telephone corporation that provides public telecommunications services pursuant to a contract under this section may not offer the services under contract in a manner that unfairly discriminates between similarly situated customers.

(5) Subject to Subsection (4), terms and conditions offered in contracts under this section that are different from tariff terms and conditions for the same services are not considered discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).

Amended by Chapter 5, 2005 General Session

**54-8b-6. Prohibition on subsidization of telecommunications services.**

A telecommunications corporation providing intrastate public telecommunications services may not subsidize its intrastate telecommunications services which are exempted from regulation or offered pursuant to a price list or competitive contract under authority of this chapter with proceeds from its other intrastate telecommunications services not so exempted or made subject to a price list or competitive contract. Similarly, proceeds from intrastate telecommunications services which are exempted from regulation or offered pursuant to a price list or competitive contract as authorized by this chapter may not subsidize other intrastate telecommunications services not so exempted or made subject to a price list or competitive contract.

Amended by Chapter 269, 1995 General Session

**54-8b-7. Continuous jurisdiction of commission -- Orders.**

The commission shall retain continuous jurisdiction over every telecommunications corporation or public telecommunications service exempted under this chapter and may exercise any statutory grant of power pertaining thereto, including the power to revoke or modify any order approving an exemption from regulation. The commission may, after notice and hearing, revoke or modify an order approving exemption, if after considering the factors in Subsection 54-8b-3(5), the commission finds such modification or revocation to be in the public interest.

Amended by Chapter 30, 1992 General Session

**54-8b-8. Antitrust and restraint of trade laws not affected by chapter.**

Nothing in this chapter shall in any way preempt, modify, exempt, abrogate, or otherwise affect any right, cause of action, liability, duty, or obligation arising from any federal, state, or local law governing unfair business practices or antitrust, restraint of

trade, or other anti-competitive activity.

Enacted by Chapter 257, 1985 General Session

**54-8b-9. Commission's jurisdiction under other provisions of title not enlarged or reduced by chapter.**

(1) Nothing in this chapter shall be construed to enlarge or reduce the commission's jurisdiction over the services and entities for which jurisdiction is provided or excluded by other provisions of this title.

(2) Nothing in this chapter shall be construed to enlarge the commission's jurisdiction over:

(a) providers of:

(i) cellular or wireless telecommunications services; or

(ii) the one-way transmission to subscribers of video programming and the subscriber interaction, if any, which is required for the selection of the video programming; or

(b) telecommunications companies classified as cooperatives.

(3) Nothing in this chapter shall diminish the commission's authority to regulate the quality of telecommunications services provided by telecommunications corporations.

Amended by Chapter 269, 1995 General Session

**54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons with telecommunication devices -- Definitions -- Procedures for establishing program -- Surcharge -- Administration and disposition of surcharge money.**

(1) As used in this section:

(a) "Certified deaf or severely hearing or speech impaired person" means any state resident who:

(i) is so certified by:

(A) a licensed physician;

(B) an otolaryngologist;

(C) a speech language pathologist;

(D) an audiologist; or

(E) a qualified state agency; and

(ii) qualifies for assistance under any low income public assistance program administered by a state agency.

(b) "Certified interpreter" means a person who is a certified interpreter under Title 53A, Chapter 26a, Interpreter Services for the Hearing Impaired Act.

(c) (i) "Telecommunication device" means any mechanical adaptation device that enables a deaf or severely hearing or speech impaired person to use the telephone.

(ii) "Telecommunication device" includes:

(A) telecommunication devices for the deaf (TDD);

(B) telephone amplifiers;

- (C) telephone signal devices;
- (D) artificial larynxes; and
- (E) adaptive equipment for TDD keyboard access.

(2) The commission shall hold hearings to establish a program whereby a certified deaf or severely hearing or speech impaired customer of a telecommunications corporation that provides service through a local exchange or of a wireless telecommunications provider may obtain a telecommunication device capable of serving the customer at no charge to the customer beyond the rate for basic service.

(3) (a) The program described in Subsection (2) shall provide a dual party relay system using third party intervention to connect a certified deaf or severely hearing or speech impaired person with a normal hearing person by way of telecommunication devices designed for that purpose.

(b) The commission may, by rule, establish the type of telecommunications device to be provided to ensure functional equivalence.

(4) (a) The commission shall impose a surcharge on each residential and business access line of each customer of local-exchange telephone service in this state, and each residential and business telephone number of each customer of mobile telephone service in this state, not including a telephone number used exclusively to transfer data to and from a mobile device, which shall be collected by the telecommunications corporation providing public telecommunications service to the customer, to cover the costs of:

- (i) the program described in Subsection (2); and
- (ii) payments made under Subsection (5).

(b) The commission shall establish by rule the amount to be charged under this section, provided that:

(i) the surcharge does not exceed 20 cents per month for each residential and business access line for local-exchange telephone service, and for each residential and business telephone number for mobile telephone service, not including a telephone number used exclusively to transfer data to and from a mobile device; and

(ii) if the surcharge is related to a mobile telecommunications service, the surcharge may be imposed, billed, and collected only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(c) The telecommunications corporation shall collect the surcharge from its customers and transfer the money collected to the commission under rules adopted by the commission.

(d) The surcharge shall be separately identified on each bill to a customer.

(5) (a) Money collected from the surcharge imposed under Subsection (4) shall be deposited in the state treasury as dedicated credits to be administered as determined by the commission.

(b) These dedicated credits may be used only:

(i) for the purchase, maintenance, repair, and distribution of telecommunication devices;

(ii) for the acquisition, operation, maintenance, and repair of a dual party relay system;

(iii) to reimburse telephone corporations for the expenses incurred in collecting and transferring to the commission the surcharge imposed by the commission;

(iv) for the general administration of the program;  
(v) to train persons in the use of telecommunications devices; and  
(vi) by the commission to contract, in compliance with Title 63G, Chapter 6a, Utah Procurement Code, with:

(A) an institution within the state system of higher education listed in Section 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as certified interpreters; or

(B) the Division of Services to the Deaf and Hard of Hearing for a program that trains persons to qualify as certified interpreters.

(c) (i) The commission shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the administration of money under Subsection (5)(b)(vi).

(ii) In the initial rulemaking to determine the administration of money under Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.

(d) Money received by the commission under Subsection (4) is nonlapsing.

(6) (a) The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of the collection.

(b) If Subsection (6)(a) applies, the telecommunications corporation shall submit to the commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection, showing that the costs exceed the revenue.

(7) The commission shall solicit the advice, counsel, and physical assistance of severely hearing or speech impaired persons and the organizations serving them in the design and implementation of the program.

Amended by Chapter 347, 2012 General Session

**54-8b-11. Establishing just and reasonable rates.**

In administering this title, the commission shall endeavor to make available high-quality, universal telecommunications services at just and reasonable rates for all classes of customers throughout this state.

Enacted by Chapter 96, 1989 General Session

**54-8b-13. Rules governing operator assisted services.**

(1) The commission shall make rules to implement the following requirements pertaining to the provision of operator assisted services:

(a) Rates, surcharges, terms, or conditions for operator assisted services shall be provided to customers upon request without charge.

(b) A customer shall be made aware, prior to incurring any charges, of the identity of the operator service provider handling the operator assisted call by a form of signage placed on or near the telephone or by verbal identification by the operator service provider.

(c) Any contract between an operator service provider and an aggregator shall contain language which assures that any person making a telephone call on any

telephone owned or controlled by the aggregator or operator service provider can access:

(i) where technically feasible, any other operator service provider operating in the relevant geographic area; and

(ii) the public safety emergency telephone numbers for the jurisdiction where the aggregator's telephone service is geographically located.

(d) No operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the call's place of origin. If such a transfer is not technically possible, the operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other operator service provider.

(2) (a) The Division of Public Utilities shall be responsible for enforcing any rule adopted by the commission under this section.

(b) If the Division of Public Utilities determines that any person, or any officer or employee of any person, is violating any rule adopted under this section, the division shall serve written notice upon the alleged violator which:

(i) specifies the violation;

(ii) alleges the facts constituting the violation; and

(iii) specifies the corrective action to be taken.

(c) After serving notice as required in Subsection (2)(b), the division may request the commission to issue an order to show cause. After a hearing, the commission may impose penalties and, if necessary, may request the attorney general to enforce the order in district court.

(3) (a) Any person who violates any rule made under this section or fails to comply with any order issued pursuant to this section is subject to a penalty not to exceed \$2,000 per violation.

(b) In the case of a continuing violation, each day that the violation continues constitutes a separate and distinct offense.

(4) A penalty assessment under this section does not relieve the person assessed from civil liability for claims arising out of any act which was a violation of any rule under this section.

Amended by Chapter 324, 2010 General Session

**54-8b-14. Intrastate interexchange toll service prices.**

(1) Prices for intrastate interexchange message toll services transmitted between two specific points shall be the same regardless of the point of origin.

(2) Subsection (1) applies only to services provided by telecommunications corporations subject to the jurisdiction of the commission.

Enacted by Chapter 269, 1995 General Session

**54-8b-15. Universal Public Telecommunications Service Support Fund -- Established.**

(1) For purposes of this section:

(a) "Basic telephone service" means local exchange service and may include such other functions and elements, if any, as the commission determines to be eligible for support by the fund.

(b) "Fund" means the Universal Public Telecommunications Service Support Fund established in this section.

(2) The commission shall establish an expendable special revenue fund known as the "Universal Public Telecommunications Service Support Fund," which is to be implemented by January 1, 1998.

(3) The commission shall:

(a) institute a proceeding within 30 days of the effective date of this section to establish rules governing the administration of the fund; and

(b) issue those rules by October 1, 1997.

(4) The rules in Subsection (3) shall be consistent with the Federal Telecommunications Act.

(5) Operation of the fund shall be nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in the state.

(6) The fund shall be designed to:

(a) promote equitable cost recovery of basic telephone service through the imposition of just and reasonable rates for telecommunications access and usage; and

(b) preserve and promote universal service within the state by ensuring that customers have access to affordable basic telephone service.

(7) To the extent not funded by a federal universal service fund or other federal jurisdictional revenues, the fund shall be used to defray the costs, as determined by the commission, of any qualifying telecommunications corporation in providing public telecommunications services to:

(a) customers that qualify for a commission-approved lifeline program; and

(b) customers, where the basic telephone service rate considered affordable by the commission in a particular geographic area is less than the costs, as determined by the commission for that geographic area, of basic telephone service.

(8) The fund shall be portable among qualifying telecommunications corporations. Requirements to qualify for funds under this section shall be defined by rules established by the commission.

(9) As necessary to accomplish the purposes of this section, the fund shall provide a mechanism for specific, predictable, and sufficient funds in addition to those provided under the federal universal service fund.

(10) (a) Subject to Subsection (10)(b):

(i) each telecommunications corporation that provides intrastate public telecommunication service shall contribute to the fund on an equitable and nondiscriminatory basis;

(ii) for purposes of funding the fund, the commission shall have the authority to require all corporations that provide intrastate telecommunication services in this state to contribute money to the fund through explicit charges determined by the commission;

(iii) any charge described in Subsection (10)(a)(ii) may not apply to wholesale services, including access and interconnection; and

(iv) charges associated with being a provider of public telecommunications service shall be in the form of end-user surcharges applied to intrastate retail rates.

(b) A telecommunications corporation that provides mobile telecommunications service shall contribute to the fund only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(11) Nothing in this section shall be construed to enlarge or reduce the commission's jurisdiction or authority, as provided in other provisions of this title.

(12) Any telecommunications corporation failing to make contributions to this fund or failing to comply with the directives of the commission concerning its books, records, or other information required to administer this section shall be subject to applicable penalties.

(13) The commission shall have a bill prepared for the 1998 General Session of the Legislature to place in statute as much of the regulation implemented by rule pursuant to the act the commission believes is practicable.

Amended by Chapter 400, 2013 General Session

**54-8b-16. Public Service Commission authority to enforce interconnection service quality standards and interconnection agreements -- Grounds for filing complaint.**

(1) For purposes of this section, "interconnection service quality standards" means specific, measurable criteria that shall be applied to a telecommunications corporation, including obligations pursuant to Section 251 of the Federal Telecommunications Act, regarding the telecommunications corporation's provision of or request for:

- (a) interconnection services;
- (b) services for resale;
- (c) unbundled network elements; and
- (d) access to operations support systems that support those services and elements.

(2) To serve the public interest and to enable the development and growth of competition within the telecommunications market in the state, the commission shall, by order when considered necessary by the commission, enforce:

- (a) rules regarding interconnection service quality standards adopted by the commission under authority of this chapter;
- (b) a commission approved interconnection agreement pursuant to Sections 251 and 252 of the Federal Telecommunications Act; and
- (c) a statement of generally available terms under Section 252(f) of the Federal Telecommunications Act.

(3) An aggrieved party may file a complaint under Subsection 54-8b-2.2(1)(e) with the commission for a violation of:

- (a) the terms of the commission's interconnection service quality rules;
- (b) the terms or conditions of an interconnection agreement;
- (c) a statement of generally available terms; or
- (d) a telecommunications corporations' obligations under the Federal Telecommunications Act.

(4) In a proceeding described in Subsection (3), the commission shall have the power to enforce:

- (a) the terms of the interconnection agreement;
- (b) the commission's interconnection service quality rules;
- (c) the statement of generally available terms; or
- (d) the telecommunications corporation's obligations pursuant to the Federal Telecommunications Act.

Enacted by Chapter 96, 1998 General Session

**54-8b-17. Procedures for enforcement of interconnection service quality -- Penalties for violation -- Funds collected.**

(1) Proceedings under Subsection 54-8b-2.2(1)(e) shall be conducted in accordance with the following procedure:

(a) The complaint shall be served upon the defendant telecommunications corporation and filed with the commission. A copy of the complaint shall also be served upon the Division of Public Utilities.

(b) An answer or other responsive pleading to the complaint shall be filed with the commission not more than 10 days after receipt of service of the complaint. Copies of the answer or responsive pleading shall be served on the complainant and the Division of Public Utilities.

(c) A prehearing conference shall be held not later than 10 days after the complaint is filed.

(d) (i) The commission shall commence a hearing on the complaint not later than 25 days after the complaint is filed, unless the commission finds that extraordinary conditions exist that warrant postponing the hearing date, in which case the commission shall commence the hearing as soon as practicable.

(ii) Parties shall be entitled to present evidence as provided by the commission's rules.

(e) The commission shall take final action on a complaint not more than 45 days after the complaint is filed unless:

(i) the commission finds that extraordinary conditions exist that warrant extending final action, in which case the commission shall take final action as soon as practicable; or

(ii) the parties agree to an extension of final action by the commission.

(2) The commission shall have the enforcement powers listed in Subsection (3) if, in the proceeding, the commission finds that:

(a) the telecommunications corporation has violated the terms of the commission's interconnection service quality rules;

(b) the telecommunications corporation has breached its obligations under the provisions of the Federal Telecommunications Act;

(c) either party to an approved interconnection agreement has violated the terms of the agreement; or

(d) either party has violated the terms of a statement of generally available terms.

(3) If the commission makes any of the findings described in Subsection (2), the

commission shall:

- (a) order the telecommunications corporation to:
  - (i) remedy the violation; and
  - (ii) comply, as applicable, with the terms of the commission's interconnection service quality rules, the interconnection agreement, or statement of generally available terms;
- (b) if considered appropriate by the commission, prescribe the specific actions that the telecommunications corporation must take to remedy its violation, including a time frame for compliance and the submission of a plan to prevent future violations;
- (c) if considered appropriate by the commission, impose a penalty on the defendant telecommunications corporation subject to the following:
  - (i) if the violation is of the duties imposed under Section 54-8b-2.2 or 54-8b-16, the commission may impose a penalty for such violation as provided in Section 54-7-25; or
  - (ii) if the violating telecommunications corporation is other than an incumbent telephone corporation with fewer than 50,000 access lines in this state, and the violation is of a duty imposed under an interconnection agreement, a statement of generally available terms, or the obligations of Section 251 of the Federal Telecommunications Act, the commission may impose a penalty subject to the following:
    - (A) if the commission finds that the violation was willful or intentional, the penalty may be in an amount of up to \$5,000 per day and the period for which the penalty is levied shall commence on the date the commission finds the violation to have first occurred through and including the date the violation is corrected; or
    - (B) if the commission finds that the violation was not willful or intentional, the penalty may be in an amount prescribed by Section 54-7-25 and the period for which the penalty is levied shall commence on the day after the deadline for compliance in the commission's order.
- (4) (a) The commission shall have the authority, on its own or at the request of the injured telecommunications corporation, to investigate a party's compliance with the commission's order under Subsection (3)(c)(ii).
- (b) If corrective or remedial action acceptable to the commission is not completed:
  - (i) 45 days after the deadline set by the commission, the commission may increase the penalty up to \$10,000 per violation per day for a willful or intentional violation; or
  - (ii) 90 days after the deadline set by the commission, the commission may increase the penalty up to \$4,000 per violation per day for a violation that is not willful or intentional.
- (5) (a) The penalty under Subsection (3)(c) shall be in addition to, and not in lieu of, civil damages or other remedies that may be available to the injured party.
- (b) In determining the amount of the penalty or the amount agreed to in compromise, the commission shall consider:
  - (i) the appropriateness of the penalty to the size of the violating party;
  - (ii) the gravity of the violation;
  - (iii) the good faith of the defendant telecommunications corporation in

attempting to achieve compliance after notification of the violation;

(iv) the impact of the violation to the establishment of competition; and

(v) the actual economic harm incurred by the plaintiff telecommunications corporation.

(c) Each day of a continuing violation or a failure to comply is a separate offense for purposes of levying a penalty under this section.

(6) All funds collected under this section shall go into the Universal Public Telecommunications Service Support Fund established under Section 54-8b-15, and shall be in addition to any contributions required of a telecommunications corporation under that section.

Enacted by Chapter 96, 1998 General Session

**54-8b-18. Definitions -- Unauthorized change of telecommunications provider -- Unauthorized charges -- Procedures for verification -- Penalties -- Authority of commission.**

(1) For purposes of this section:

(a) "Agents" includes any person, firm, or corporation representing a telecommunications corporation for purposes of requesting a change in a subscriber's telecommunications provider, but does not include a local service provider when executing a request submitted by another service provider or its agents.

(b) "Freeze" means a directive from a subscriber to retain the provider of public telecommunications services selected by the subscriber until the subscriber provides authorization for a change to another provider of public telecommunications services through any means by which a freeze is implemented.

(c) "Small commercial subscriber" is a person or entity conducting a business, agriculture, or other enterprise in the state having less than five telecommunications lines.

(d) "Subscriber" means a corporation, person, or government, or a person acting legally on behalf of a corporation, person, or government who has purchased public telecommunications services from a telecommunications corporation.

(2) No telecommunications corporation or its agents shall make any change or authorize a different telecommunications corporation to make any change in the provider of any public telecommunications service to a subscriber unless it complies, at a minimum, with Subsections (2)(a) through (e). This Subsection (2) does not apply to a telecommunications corporation that effectuates a change in service provider pursuant to a change authorization submitted or requested by another telecommunications corporation.

(a) The telecommunications corporation or its agents shall, at a minimum, inform the subscriber of the nature, extent, and rates of the service being offered and any charges associated with the change.

(b) Notwithstanding Section 13-26-4, changes in provider of telecommunication service accomplished through telephone solicitation shall comply with the Telephone Fraud Prevention Act, Sections 13-26-2, 13-26-8, 13-26-10, and 13-26-11.

(c) For sales of residential service or small commercial subscriber service, the telecommunications corporation or its agents shall confirm that the subscriber is aware

of any charges that the subscriber must pay associated with the change and that the subscriber authorizes the change of provider. The subscriber's authorization to change the provider shall be confirmed by any one of the following methods:

- (i) obtaining the subscriber's written authorization;
- (ii) having the subscriber's oral authorization verified by an independent third party; or
- (iii) any means provided by rule of the Federal Communications Commission or the commission.

(d) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.

(e) (i) The written authorization to change the provider shall be signed by the subscriber and shall contain a clear, conspicuous, and unequivocal request by the subscriber for a change of telecommunications provider.

(ii) A written authorization is not valid if it is presented to the subscriber for signature in connection with a sweepstakes, game of chance, or any other means prohibited by commission rule.

(iii) Nothing in this section shall be construed to prohibit any person from offering a premium, incentive, or a thing of value to another as consideration for authorizing a change of telecommunications service provider, provided that no element of chance or skill is associated with the offer of the premium, incentive, or thing of value or its receipt.

(3) The confirmation by a third-party verifier shall, at a minimum:

(a) confirm the subscriber's identity with information unique to the customer, unless the customer refuses to provide identifying information, then that fact shall be noted;

(b) confirm that the subscriber agrees to the requested change in telecommunications service providers; and

(c) confirm that the subscriber has the authority to select the provider as the provider of that service.

(4) A third-party verifier shall meet each of the following criteria:

(a) any criteria for third-party verifiers set by the Federal Communications Commission;

(b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:

(i) by the telecommunications corporation or its agents that seek to provide the telecommunications service or by any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more than 5% of the telecommunications corporation; or

(ii) by the marketing entity that seeks to market the telecommunications service or by any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more than 5% of the marketing entity;

(c) operate from facilities physically separated from:

(i) those of the telecommunications corporation or its agents that seek to provide the subscriber's telecommunications service; or

(ii) those of the marketing entity that seeks to market a telecommunications service to the subscriber; and

(d) not derive commissions or compensation based upon the number of change authorizations verified.

(5) A telecommunications corporation or its agents seeking to verify the change authorization shall connect the subscriber to the third-party verifier or arrange for the third-party verifier to call the subscriber to verify the change authorization.

(6) A third-party verifier that obtains the subscriber's oral verification regarding the change shall record that verification by obtaining appropriate verification data.

(7) (a) The record verifying a subscriber's change of provider shall be available to the subscriber upon request.

(b) Information obtained from the subscriber through verification may not be used for any other purpose.

(c) Any intentional unauthorized release of the information in Subsection (7)(b) is grounds for penalties or other action by the commission or remedies provided by law to the aggrieved subscriber against the telecommunications corporation, third-party verifier, their agents, or their employees who are responsible for the violation.

(8) The third-party verification shall occur in the same language as that in which the change was solicited.

(9) The verification requirements described in this section shall apply to all changes in the provider of any public telecommunications service.

(10) The commission may promulgate rules:

(a) necessary to implement this section;

(b) consistent with any rules promulgated by the Federal Communications Commission; and

(c) in a nondiscriminatory and competitively neutral manner.

(11) (a) Each subscriber may elect to require the telecommunications corporation providing the subscriber's local exchange service to implement a freeze until the subscriber provides authorization for a change to another provider of public telecommunications services.

(b) Once a subscriber has elected the freeze option under Subsection (11)(a), the telecommunications corporation providing the subscriber's local exchange service may not process a request to change the subscriber to another provider of telecommunications services without prior authorization directly from the subscriber.

(12) (a) Whenever the subscriber's provider of a telecommunications service changes, the new provider shall:

(i) retain a record of the verified change authorization consistent with requirements of the Federal Communications Commission or rules issued by the commission; and

(ii) be responsible for providing a conspicuous notice of the change within 30 days of the effective date of the change of service.

(b) At a minimum, the notice in Subsection (12)(a)(ii) shall identify the new provider, contain a general description of the service and price, and provide information necessary for the subscriber to have questions answered or to rescind the change.

(13) Any bill shall identify each telecommunications service provider of telecommunication service for which billing is rendered.

(14) (a) Any person or provider of telecommunications service inadvertently or knowingly designating or changing the subscriber's telecommunications service

provider in violation of this section shall refund to the subscriber any amounts required by the rules of the Federal Communications Commission and the commission.

(b) The unauthorized provider in Subsection (14)(a) additionally shall:

(i) bear all costs of restoring the customer to the service of the subscriber's original service provider; and

(ii) pay to any other telecommunications provider any fees set by the commission for the designation or change.

(15) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by a subscriber, a telecommunications corporation, the Division of Public Utilities, or by the commission on its own motion.

(16) Any telecommunications corporation, its agents, or a third-party verifier who violates this section or rules adopted to implement this section shall be subject to the provisions of Sections 54-7-23 through 54-7-29.

(17) The commission is granted authority to enforce provisions relating to an unauthorized telecommunication service provider change in interstate and intrastate telecommunication service involving telecommunications corporations operating in the state.

Enacted by Chapter 113, 1999 General Session